

EXHIBIT 2

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Civi Action No. 06 Civ. 8193(PAC) (DF)

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CLEAR CHANNEL OUTDOOR, INC.,
Plaintiff,

- against -

THE CITY OF NEW YORK and PATRICIA J.
LANCASTER, in her official capacity as
Commissioner of the New York City
Department of Buildings,

Defendants.

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Civil Action No. 06 Civ. 8219(PAC) (DF)

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ATLANTIC OUTDOOR ADVERTISING, INC., SCENIC
OUTDOOR, INC., TROYSTAR CORPORATION and
WILLOW MEDIA, L.L.C,

Plaintiffs,

-against-

CITY OF NEW YORK, PATRICIA J. LANCASTER,
and EDWARD FORTIER,

Defendants.

-----x

March 19, 2008
10:10 a.m.

Deposition of KERRY
GOULD-SCHMIT, pursuant to Notice, held at
the offices of Davis Wright Tremaine LLP,
1633 Broadway, New York, New York, before
Jineen Pavesi, a Registered Professional
Reporter, Registered Merit Reporter,
Certified Realtime Reporter and Notary
Public of the State of New York.

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2 day-to-day work of updating the RFP and
3 things like that, they really weren't so
4 involved because they can't be.

5 You know, they are an oversight
6 agency, they really can't sit on a
7 committee or anything like that.

8 So at that point their
9 involvement became a lot less, during the
10 competitive bid process and during the
11 contract negotiations.

12 New York City Marketing, on the
13 other hand, was quite involved, they were
14 involved when we drafted the RFP with the
15 idea of keeping the 22-1/2 percent, they
16 were involved also on the selection
17 committee because we really felt they had
18 expertise in figuring out the
19 compensation, advertising markets, things
20 like that, so they were technical advisers
21 to the selection committee on the RFP.

22 They were also involved in the
23 contract negotiations, Joe Perello was
24 actively involved in negotiating those
25 pieces of the contract that described the

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2 relationship with CEMUSA, how they can use
3 their advertising, so they were involved
4 in that.

5 And really every day they are
6 heavily involved in how that 22-1/2
7 percent gets used as well as planning all
8 of the international advertising received.

9 Because on top of the 22-1/2
10 percent, we also receive \$400 million in
11 advertising campaigns over the 20 years,
12 so it starts at 15 million and goes up
13 from there annually.

14 They program all of that
15 international advertising, so they have
16 people on staff, this is their job.

17 Q. You mentioned --

18 A. I would just say, too, at the
19 end, in the contract negotiation,
20 obviously the deputy mayor, when we were
21 going to the FCRC, we would like to know,
22 but their involvement was pretty early on.

23 Q. You mentioned during the
24 Giuliani administration there had been a
25 prior RFP in and around 1997; what

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2 within that.

3 We didn't reassess that and say
4 could we go with less advertising; it
5 existed, we were moving forward under that
6 ULURP and those parameters and it is what
7 it is and that's the size of the
8 advertisement.

9 Q. You proposed a new law to the
10 City Council to permit advertising on the
11 shelters, correct?

12 A. Correct.

13 Q. To the newsstands, I'm sorry.
14 Were there hearings on this
15 topic?

16 A. Yes.

17 Q. Who testified?

18 A. There were many hearings, I
19 think you would have to get the list of
20 who testified from the council because
21 many people testified.

22 I believe there were upwards of
23 six hearings about the newsstand law.

24 Q. What were with the primary
25 objections voiced to changing the

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2 Q. To your knowledge, they have
3 not looked at whether the ads are going up
4 on the arterial highways?

5 A. To my knowledge, no.

6 Q. We started out this deposition
7 and you listed for me the numerous bodies
8 that had reviewed the street furniture
9 franchise and we also discussed that in
10 1996 and 1997 the city had also gone
11 through several reviews.

12 Was there ever any
13 comprehensive review of outdoor
14 advertising by the city with the aim of
15 coordinating its regulation of signs on
16 private property and New York City's role
17 as an advertiser?

18 A. Not to my knowledge.

19 Q. Were you ever present or aware
20 of any discussions about the need to have
21 a unified cohesive approach for all
22 signage in New York City, whether on
23 private property or on government
24 property?

25 A. I was never involved in any

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2 discussions of that matter.

3 Q. And you're not aware of any
4 discussions of that nature?

5 A. No.

6 Q. Are you aware of or were you
7 ever present at any discussions about the
8 need to have a unified cohesive approach
9 for all signage on city or MTA property
10 are, including the subway entrances for
11 street furniture?

12 A. No, I was never involved in any
13 of those.

14 I don't even know if those
15 conversations happened.

16 Q. So you're not aware of any such
17 discussions?

18 A. Correct.

19 Q. What efforts, if any, were
20 there to coordinate all advertising on any
21 city structures to prevent the
22 overabundance of advertising on the
23 streets?

24 A. From DOT's perspective, we were
25 not involved in any discussions like that.

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2 Q. In connection with issuing new
3 street furniture franchise, nobody looked
4 at whether there had been increase in
5 subway entrance panels?

6 A. Correct.

7 Q. Did you investigate whether the
8 MTA was going to or had already put up
9 digital ads on subway entrances?

10 A. No, no contact with MTA about
11 their digital ads.

12 Q. Did the DOT, in issuing the new
13 franchise, do anything to go out and look
14 at the city blocks to see whether there
15 was an oversaturation of ads on the city
16 streets?

17 A. No; again, as I said, the ULURP
18 happened, it was approved in '97, we were
19 sticking within the same parameters and so
20 when it came time to reissue the
21 franchise, it was viewed as being, like I
22 said, a smaller program that was
23 contemplated in 1997, which went through
24 all the regulatory proceedings and so we
25 moved forward.

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2 later than this, but this is the meat of
3 the ULURP from 1996.

4 Q. What do you think is missing?

5 MS. NEUFELD: Off the record.

6 (Discussion off the record.)

7 Q. Would you turn to page 16; in
8 1996, the Manhattan borough president and
9 Manhattan borough board recommended
10 disapproval of the street furniture RFP in
11 part because of their concerns about too
12 much clutter and ad copy on the sidewalk,
13 isn't that correct?

14 (Witness perusing document.)

15 A. I do see, according to this
16 document, that the borough president
17 recommended disapproval.

18 Q. On page 17 it indicates that
19 the Manhattan borough board also voted to
20 disapprove the application, correct, on
21 the bottom?

22 A. Yes, correct.

23 Q. Would you also turn to page 13
24 of Exhibit 153, it states, "Four community
25 boards voted in favor of the proposal. 17

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2 boards voted in favor of the proposal with
3 modifications. 19 voted against the
4 proposal. One board voted no
5 recommendation."

6 Do you see that?

7 A. Yes, I see that.

8 Q. So 21 community boards were in
9 favor of the proposal with some
10 modifications or as is and 19 community
11 boards were against the proposal and one
12 abstained, correct?

13 A. According to this, correct.

14 Q. Would you agree with me that
15 was a very, very close vote?

16 A. Yes, I would agree that's a
17 close vote.

18 Q. About as close as it could
19 possibly get?

20 A. It was a close vote.

21 Q. So there was significant
22 opposition to the 1996 street furniture
23 proposal from the various community
24 boards?

25 A. From the community boards there

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2 is obviously opposition.

3 Q. Let's go back to the problems
4 identified by the Manhattan borough
5 president on page 16.

6 Would it be fair to say that if
7 he was concerned with the proliferation of
8 ads on the streets in 1996, that there
9 were far more ads on the streets by 2004
10 in Manhattan?

11 A. It is a different borough
12 president obviously from this point to who
13 we dealt with.

14 And, yes, from -- I don't know
15 that quantitatively, actually, if there
16 are more advertisements on the streets
17 since 1996.

18 My assumption would be -- I
19 actually don't know on the pay phones if
20 there was a franchise prior to that, I am
21 not that familiar with DOITT's program, so
22 I can't say all of the pay phone ads have
23 come out since 1996, I don't know the
24 history of that.

25 So quantitatively, I don't know

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2 if there is more advertising on the
3 sidewalk today or in 2001 versus 1996.

4 Q. Did you make any effort to
5 review the documentation in connection
6 with the 2004 amendments to the DOITT
7 rules which focused on the number of ads
8 on phones and the growth in that market?

9 A. By 2004 we had already gone
10 through, we had an authorizing resolution,
11 we changed the newsstand law and I don't
12 recall what point they changed or amended
13 their rules, but we issued the RFP in
14 March of 2004.

15 Q. But you had not entered into
16 the contract at that time?

17 A. No, but we had set out business
18 terms to base proposals on.

19 Q. Let's look at some of the
20 issues identified by the Manhattan borough
21 president.

22 Page 16 of Exhibit 153 says,
23 "The borough president proposes that site
24 selection for franchise structures be
25 preceded by extensive surveys of existing

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2 street furniture so that community
3 districts which have too many or too few
4 of these structures can be better served
5 in the future."

6 Did the city undertake any
7 surveys of existing street furniture in
8 connection with the 2004 street furniture
9 RFP?

10 A. No, to my knowledge, we did
11 not; we had the list of existing shelters
12 and list of existing licensed newsstands
13 and we limited the number of toilets to 20
14 and that is it.

15 Q. Did the city conduct any
16 surveys of all advertisements on
17 government property, including the urban
18 panels on the subway entrances, in
19 connection with the 2004 street furniture
20 RFP?

21 A. No, we did not.

22 Q. Back to page 16 of Exhibit 153,
23 Manhattan borough president said,
24 "Comprehensive borough-wide street
25 furniture master plan should be completed

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2 with the intent to set limits on the
3 number of franchise structures per block
4 phase and per intersection."

5 Did the city ever complete such
6 a master plan prior to entering into the
7 CEMUSA agreement?

8 A. Not to my knowledge.

9 Q. Why not?

10 A. Because we went through a
11 regulatory process and during that process
12 I am sure there were objection voiced by
13 lots of people, but in the end it was an
14 approved process and the parameters were
15 set and the numbers of structures were set
16 and we were given the proper regulatory
17 approval to move forward.

18 Q. And that process was in 1997?

19 A. It was in 1997, it is part of
20 this right here, this is part of that
21 process.

22 So certainly I think we would
23 all be naive to assume that during
24 regulatory processes that there are no
25 objections, there are objections,

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2 Exhibit Clear Channel 155 a document Bates
3 stamped New York City 15406 through 15424,
4 which is a second technical inquiries
5 issued by the DOT, this time dated June
6 11, 2004.

7 (Clear Channel Exhibit 155,
8 Bates stamped New York City 15406 through
9 15424, was marked for identification, as
10 of this date.)

11 (Witness perusing document.)

12 Q. Do you recognize this document?

13 A. Yes, I do.

14 Q. What is it?

15 A. Again, a second set of
16 technical inquiries to the RFP, questions
17 get submitted during RFP and these are
18 nonbinding responses to the questions.

19 Q. Did you help write both the
20 first and second technical inquiries?

21 A. I did help write them.

22 Q. Can you turn to the page Bates
23 stamped 15411 and if you you could just
24 skim Inquiry No. 21 and the response to
25 it.

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2 (Witness perusing document.)

3 A. Again, I think it is a question
4 about DOITT's franchise and why we didn't
5 have to go through another ULURP
6 proceeding.

7 As I stated earlier, the
8 program was smaller than what was put
9 forth in 1997, the franchise program that
10 we as DOITT was doing; it was deemed by
11 City Planning we did not have to go
12 through another ULURP proceeding.

13 Again, DOITT has a separate
14 franchise authorized by different
15 legislation, it is a different contract,
16 it is not DOT's contract to monitor or
17 enforce and so I think these questions are
18 really better answered by DOITT.

19 Q. Do you know who submitted this
20 inquiry?

21 A. No, off the top of my head I
22 don't know.

23 Q. Let's take a closer look at it.

24 In the second sentence the
25 inquirer said, "In its answers to

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2 inquiries about the 1997 RFP, DOT
3 indicated that the city would coordinate
4 advertising between pay phones and the
5 franchise structures through, 1, DOITT's
6 prohibition against pay phone advertising
7 in Manhattan on the same side of any
8 avenue block with a bus stop shelter,
9 newsstand, automatic pay toilet or
10 computer informational terminal and, 2, on
11 all other city streets within 150 feet of
12 these structures."

13 Was that an accurate
14 characterization of the city's answers to
15 inquiries about the 1997 RFP?

16 A. I don't recall; again, I wasn't
17 there in 1997, it would have to be looked
18 up in documentation.

19 Q. Look at the next sentence.

20 "DOITT is not currently
21 adhering to these policies, which means
22 that the impact of the current RFP on the
23 city streets will be significantly
24 different than what it would have been
25 under the 1997 RFP."

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2 When DOT got this inquiry, did
3 it do anything to confirm whether this was
4 accurate or inaccurate, that DOITT is not
5 currently adhering to these policies and
6 that therefore the impact of the current
7 RFP on the city streets will be
8 significantly different than it would have
9 been under the 1997 RFP?

10 A. No, I am sure I called Stanley
11 Shor to let him know that we were getting
12 a complaint that they weren't enforcing,
13 but, again, it wasn't DOT's place to
14 enforce the pay phone franchise, it is
15 DOITT's contract.

16 I recall calling Stanley to say
17 we got a complaint, but, again, it didn't
18 have any impact as to what was included in
19 the RFP.

20 Q. And when you called Stanley
21 Shor, other than informing him about the
22 complaint, did you review with him whether
23 this was accurate or not?

24 A. Accurate in what sense?

25 Q. Did you review with Stanley

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2 Shor whether it was true that DOITT was
3 not currently adhering to these policies?

4 A. No, I would have just let
5 Stanley know that this was going on.

6 Again, it is their contract to
7 enforce.

8 Q. It says, "DOITT refuses to
9 enforce the advertising prohibition
10 contained in clause 1 above on Broadway in
11 Manhattan, claiming that Broadway is not
12 an avenue."

13 Did you discuss that with
14 Stanley Shor?

15 A. I don't recall specifics.

16 I don't recall if it was a
17 phone call or e-mail, but as to what DOITT
18 did with it, again, it is really not my
19 place to comment on how DOITT was
20 enforcing the contract.

21 Q. If you look at the beginning of
22 little B on the bottom of page 15411, it
23 says, "The inquirer says that even when
24 DOITT acknowledges that pay phone
25 advertising violates the prohibition,

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2 DOITT refuses to remove the advertising,
3 it simply issues a notice of violation and
4 encloses the complaint. This results in
5 significantly more pay phones with
6 advertising on the city streets than could
7 have been foreseen in 1997."

8 Did you investigate with
9 Stanley Shor whether this was accurate?

10 A. Did not.

11 Q. New York City 15412, it
12 continues, subparagraph C, it says, "DOITT
13 has been allowing the installation of pay
14 phones with advertising in violation of
15 the prohibition in clause 1. This results
16 in significantly more pay phones with
17 advertising on the city streets than could
18 have been foreseen in 1997."

19 When you spoke with Stanley
20 Shor, did you investigate whether this
21 allegation was accurate?

22 A. No, again, it wasn't my place
23 to enforce their contract and it also
24 isn't my place -- City Planning's place
25 to determine if additional regulatory

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2 review is needed.

3 Q. Did you raise these issues with
4 City Planning?

5 A. Some of these questions were
6 sent to City Planning, I don't recall if
7 this was or not.

8 Again, this comes after the
9 release of the RFP, so we're beyond the
10 point of City Planning looking to see if
11 we needed to amend the ULURP, go through
12 that process; that all happened prior to
13 this.

14 This is an RFP that has been
15 released, reviewed and okayed from a
16 regulatory standpoint and is out there for
17 companies to bid on, it is all out there,
18 it has all been approved, so this comes
19 after the fact.

20 Q. In your mind is it therefore a
21 fait accompli even if you had learned at
22 this point that there were going to be
23 significant issues of clutter on the
24 sidewalks, would you have proceeded?

25 A. I think City Planning, when

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2 they looked at the program before they
3 gave us the go-ahead, I am sure they
4 contemplated these things and it is their
5 role in city government to do that and
6 they informed us that we were okay to move
7 forward with the program and so we did.

8 Q. Do you know for a fact whether
9 City Planning looked at the increase of
10 advertising on the streets, whether on the
11 phone kiosks or on the MTA subway panels,
12 do you know for a fact that City Planning
13 looked at the increase of ads on the
14 streets when they made the decision that
15 they didn't need another ULURP review?

16 A. I do not know that for a fact.

17 Q. Let's go back to New York City
18 15412.

19 In subparagraph D the
20 individual making this complaint says, in
21 essence, that DOITT automatically assumes
22 that the pay phone was installed first and
23 therefore that the pay phone can remain.

24 Did you discuss the accuracy of
25 that assertion in your conversation with

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2 Stanley Shor, did you try to see whether
3 that was accurate?

4 A. No and that's really a
5 discussion that should happen between
6 DOITT and Department of Consumer Affairs,
7 they licensed the newsstands, so it
8 becomes a question of licensing.

9 So, yes, there are two agencies
10 with responsibilities that were not under
11 my control.

12 Q. Looking at E and F in this
13 Inquiry No. 21.

14 Is it also fair to say you
15 didn't ask Stanley Shor the accuracy of
16 the allegations in these paragraphs
17 either?

18 A. I don't recall; as I said, I
19 don't really recall the back and forth.

20 I do know that Stanley was
21 contacted that there were complaints.

22 Q. That was so that he could --

23 A. Act on it as they saw
24 appropriate.

25 Q. Did you have any conversations

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2 with the City Planning about these
3 complaints voiced in Inquiry No. 21?

4 A. No, I don't believe there would
5 have been any reason why I would have had
6 discussion with City Planning about them.

7 Again, this all came in after
8 City Planning's review.

9 Q. Do you know whether anyone else
10 at DOT spoke to City Planning about the
11 subject of the increased ads on the
12 telephone kiosks since 1997?

13 A. I couldn't confirm that, I have
14 no idea.

15 Q. To your knowledge, did the city
16 do any studies of the impact of the ads on
17 the new CEMUSA shelters on aesthetics in
18 the city?

19 A. No, I don't believe -- can you
20 rephrase that.

21 Q. Did the city do any studies on
22 whether the ads on the new bus shelter
23 franchises would detract from the
24 cityscape?

25 A. No, there were no studies done

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2 on the impact of the ads on the aesthetics
3 of the streetscape.

4 There was a fairly involved
5 design review process to talk about the
6 aesthetics of the structure itself.

7 Q. Did the city do any reviews of
8 whether the ads on the new CEMUSA bus
9 shelters would have any impact on traffic
10 safety in the city?

11 A. No; again, the shelters have
12 been out there with ads since the
13 mid-Eighties, so we did not conduct any
14 further studies than what went through the
15 regulatory process with ULURP.

16 Q. As you say, the shelters have
17 been out there since the 1980s with ads.

18 Has the DOT found that the ads
19 on the bus shelters have materially
20 contributed to any traffic safety
21 problems?

22 A. That I couldn't speak to, that
23 predates me.

24 I am not sure.

25 Q. For the period of time that

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2 that's really viable, see if we got
3 complaints about it, this is ugly, I don't
4 like it.

5 Just to do a little test, just
6 to measure the waters, get the feel.

7 Q. You thought this was a
8 potentially attractive form of advertising
9 and it would make the city competitive if
10 they allowed this type of advertising, is
11 that fair?

12 A. I believe that's fair, it could
13 be attractive and, yes, I do think we
14 think it is the wave of the future, it is
15 just how do you do it in a meaningful and
16 educated way.

17 We thought this was one small
18 little test that we can start our
19 education on, this electronic media.

20 Q. Is it also fair to say that
21 electronic media would also increase the
22 revenues to the city?

23 A. Yes, that is fair to say.

24 Q. What were the major
25 considerations in devising a pilot?

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2 Were any studies done before
3 the pilot went into effect about the
4 either visual or traffic safety impact of
5 electronic ads on any street furniture
6 structures?

7 A. Not under the franchise's
8 control, not that I know of at DOT.

9 This was the test.

10 Q. Did you research whether any
11 other cities had experimented with
12 electronic media on street furniture
13 structures?

14 A. We know the MTA, we -- the
15 reason we know they do it is because some
16 people are unhappy, like the Municipal
17 Arts Society.

18 We know out there there are
19 pros and cons for this.

20 Do we have any reference to a
21 study, no, I think they are very hard to
22 find, we don't have any that I know of.

23 Q. Did you talk to anyone at the
24 MTA about the pros and cons that they had
25 found in the use of electronic media on

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2 the subway panels?

3 A. Did not.

4 Q. What was your understanding of
5 the pros and cons of electronic media?

6 A. I don't have any preconceived
7 notions as to what the pros and cons are,
8 I really left that to the professionals,
9 which would be the people that do this
10 type of analysis.

11 I don't really know, I don't
12 know that it has any impact or a
13 tremendous amount of impact.

14 Q. Other than deciding that you
15 would have the customer surveys and you
16 would have the before and after traffic
17 accident data, did you have any other
18 discussions prior to the pilot going into
19 effect about the traffic safety
20 implications of the pilot?

21 A. No, not that I recall.

22 We did inform City Planning
23 that we were doing it, but, no, I think we
24 felt this is our time to do this.

25 Q. Did City Planning have any

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2 advertising on them, they would be
3 generating revenue and some of that
4 revenue should go back to making it a more
5 pleasant environment, because it is fairly
6 unpleasant underneath the sidewalk sheds.

7 So we did discuss in London the
8 construction and sidewalk sheds are nicer,
9 we were just talking anecdotally about
10 what we experienced.

11 It certainly came up about its
12 impact, that we had the street furniture
13 franchise on the street and it was moving
14 forward and would this even be attractive
15 to people, because there is just more and
16 more advertising out there and at some
17 point does it lose its value, so we sort
18 of talked about that at a very high level
19 of detail, no great analysis, just sort of
20 what our feelings were about that.

21 That's what I remember most
22 about it.

23 Q. Was there discussion that this
24 could bring in revenue for the city?

25 A. Sure.

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2 Q. Was there discussion about how
3 much revenue it could bring in?

4 A. No; the bigger concern was are
5 we hurting ourselves by having too much
6 advertising.

7 It wasn't an analysis of I
8 think it is worth this much; maybe that
9 type of analysis has gone on, but I was
10 not involved in that.

11 Q. So there was concern that there
12 would be an oversaturation of the market
13 and you might decrease the value of the
14 ads on the street furniture structures if
15 you also had ads on the sidewalk sheds?

16 A. Sure, street furniture, phones,
17 whatever is out there, yes; the idea was
18 could you have too much out there.

19 And also, you need to attract
20 people to come in and do it.

21 There was just a conversation
22 about, well, maybe the industry wouldn't
23 even be interested in this because there
24 is so much out there.

25 Q. Was there an attempt to